

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

AUG 20 2012

No. 5 125839
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MARTIN CHAMBERS

PETITIONER

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

The Attorney General of Canada
British Columbia Regional Office (Vancouver)
Robson Court
900 - 840 Howe Street
Vancouver, British Columbia V6Z 2S9

This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

- (1) The address of the registry is:

The Law Courts
800 Smithe Street
Vancouver BC V6Z 2E1

- (2) The ADDRESS FOR SERVICE of the petitioner(s) is

2459 Pauline Street
Abbotsford, BC V2S 3S1

Fax number address for service (if any) of the petitioner(s): 604-859-3361

E-mail address for service (if any) of the petitioner(s):

- (3) **The name and office address of the petitioner's lawyer is:**

John W. Conroy, Q.C.
Conroy & Company
2459 Pauline Street
Abbotsford, BC V2S 3S1

Claim of the Petitioner(s)

Part 1: ORDER(S) SOUGHT

1. The Petitioner seeks an order for disclosure of certain materials from the criminal investigation of the Royal Canadian Mounted Police files (hereinafter referred to as the RCMP) regarding a joint operation and particularly the materials relating to the attendances for prosecution named Operation Bermuda Shorts involving Canadian and American law enforcement agencies and resulting in charges, a trial in Miami, Florida and the conviction and sentence of the Petitioner of charges of laundering proceeds of crime and conspiracy to launder proceeds of crime. The Petitioner seeks all records and files regarding the attendance of then Corporal Majcher and Corporal Arnold in Miami from the start of the trial on August 18, 2003 until the sentencing of the Petitioner on December 15, 2003, including records showing restaurants attended, communications with parties in Miami, and any allegations made against Sergeant Majcher during that period and any investigation of those allegations.
2. The Petitioner seeks an order for disclosure of any documentation in the RCMP files of any law enforcement concerns from the Petitioner towards then Sergeant Majcher and whether any investigation found the concerns to be unfounded.

Part 2: FACTUAL BASIS

1. The Petitioner was arrested in the United States on the money laundering and conspiracy charges and taken to Miami in August 2002 and he commenced his trial on August 18, 2003, resulting in his conviction September 5, 2003.
2. The presiding judge at trial was Judge Ungaro Benages. She presided over the sentencing on December 15, 2003.
3. Her ex-husband, Michael Benages, has advised counsel for Chambers that he and his ex-wife, Ungaro Benages, had dinner with two RCMP officers in Miami, at

the Casa Tua Restaurant and the dinner occurred before Thanksgiving 2003, in September or October of that year.

4. Michael Benages describes Corporal Majcher as speaking about his undercover work and the joint investigation of the Canadians, the subject of the joint investigation with the Federal Bureau of Investigation in front of Judge Ungaro Benages and they talked about the case she was presiding over involving the Petitioner, over dinner, and before the sentencing and as well that prior to the dinner the RCMP officers had given a boxed Canadian RCMP hat to the judge.
5. After the Casa Tua dinner, Michael Benages and the two RCMP officers had a reciprocating dinner at the Fish Grill in Miami.
6. Michael Benages also describes, as a second impropriety, that his ex-wife, the sentencing judge of the Petitioner, admitted adultery with Corporal Majcher.
7. Counsel for the Petitioner and a private investigator, Jim Westman, a former RCMP officer, went to Hong Kong where now retired Corporal Majcher works in the finance field and met with him. Jim Westman covertly tape recorded the conversation and put to Mr. Majcher that he had a report that Mr. Majcher had had a relationship with Judge Ungaro Benages during the trial of the Petitioner. Mr. Majcher said that that did not occur until after the trial when he went back to Miami to give the judge an RCMP hat. Mr. Benages puts the dinner contact before Thanksgiving, i.e., before the sentencing.
8. Mr. Majcher also spoke of the RCMP law enforcement concern that the Petitioner had reached out to a person of interest in the David Ward murder and, as a result, the RCMP put him in protective custody for a period of about six months. It is believed this is the law enforcement concern referred to as a reason for refusing the treaty transfer of the Petitioner back to Canada. If so, the law enforcement concern is likely no more than a rumour and stale-dated.
9. The Petitioner seeks any memorandum, report, records of attendances or any other documentation that puts a date on the dinner or dinners at restaurants in

Miami involving Mr. Majcher, Judge Ungaro Benages, or Michael Benages and any documentation with respect to the giving of the RCMP hat to Judge Ungaro Benages, the date of taking the hat, the travel to Miami, and any other information with respect to this. The Petitioner also seeks any memorandum, report, records or any other documentation of any allegations made against Mr. Majcher for the above described conduct and any reports made by him in response.

10. The next year, 2004, then Inspector Majcher, was suspended, investigated, and a resolution came about in which he retired without any allegation of misconduct. The Petitioner seeks the details of the investigation and the reasons for the resolution.

Part 3: LEGAL BASIS

- 1 The Petitioner's United States counsel intends to apply for a or post sentencing remedy based on the misconduct of the RCMP officer meeting and discussing the Petitioner's case at dinner, before the sentencing as a grounds for a re-sentencing based on the change in law in the United States Supreme Court that made the sentencing guidelines discretionary and on the basis that the appearance of bias should lead to setting aside the sentence and a new sentence imposed based on this law.
- 2 The Petitioner will also apply to set aside his conviction before Judge Ungaro Benages, should the disclosed records indicate that the start of the affair or relationship between Judge Ungaro Benages and Mr. Majcher occurred or started before or during the trial.
- 3 The application is based in s.7 of the *Charter*, and has been delineated in *Purdy v. Canada (Attorney General)* 2003 BCSC 725; upheld at 2003 BCCA 447. A Canadian citizen is *prima facie* entitled to materials obtained in a Canadian police force joint criminal investigation for a United States prosecution. Without disclosure of the investigative materials Purdy's right to make full answer and defence to United States charges was impaired and this

constituted a breach of his s. 7 *Charter rights*. The *Charter* violation was enforceable by a specific *Charter* s. 24(1) remedy notwithstanding the absence of any Canadian criminal charge.

- 4 The second basis of the application is based in *R. v. McNeil*, 2009 SCC 3. The appellant applied to obtain records in hands of provincial Crown and police service relating to pending criminal charges and disciplinary proceedings against the arresting officer to help him develop an application to admit fresh evidence on appeal. The crown appeal was allowed, but the Supreme Court of Canada said that records relating to a question of serious misconduct by police officers that were actually a part of the investigation properly fell within the scope of *Stinchcombe* disclosure. The test for first party disclosure is whether the police misconduct is either related to the investigation or the finding of misconduct could reasonably impact on the case against the accused. Any other disclosure of police misconduct falls under an O'Connor application and involves a balancing of the privacy interest of the police officer. See paras. 53, 54.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Michael Benages, sworn July 8, 2011.
2. Affidavit #1 of Howard Rubin, sworn August 15, 2012.
3. Affidavit #1 of Jim Westman, sworn August 16, 2012.
4. Affidavit #1 of Don Re, sworn March 13, 2012.

The petitioner(s) estimate(s) that the hearing of the petition will take 1 hour.

Date: August 16, 2012



JOHN W. CONROY, Q.C.
Lawyer for Petitioners

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part 1 of this petition

[] with the following variations and additional terms:

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Date:[dd/mmm/yyyy].....

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Signature of [] Judge [] Master